



FAMILY COURT OF WESTERN AUSTRALIA

PROPERTY ORDERS KIT

1) *Is this kit for me?*

- **Yes** - if you are thinking about asking the Family Court to make orders about your property.
- **No** – if you have reached an agreement with the other party about your property. (Ask Court staff for the Consent Orders Kit, which is also available at www.familycourt.wa.gov.au)

2) *What is property?*

Property can take many forms. For example it includes real estate, motor vehicles, furniture and investments. In some cases superannuation is treated as property.

3) *Do I really need to make an application to the Court?*

It is usually better to resolve problems away from the Court.

If you are a prospective party you must follow the Family Court's pre-action procedures. Read the separate brochure called *Before you file – pre-action procedure for financial cases*.

Pre-action procedure steps include:

- participating in dispute resolution services such as mediation, counselling, negotiation, conciliation or arbitration
- writing a letter to the other party setting out your claim and exploring options for settlement
- complying, as far as practicable, with the duty of disclosure.

Anyone who does not comply with these requirements (unless exempt) risks serious consequences, including costs penalties.

Here are some alternatives to consider:-

- Contact Legal Aid Western Australia to enquire about their Alternative Dispute Resolution program.
- Use a mediator. *Anglicare, Centrecare, Relationships Australia* and other groups and individuals provide mediation, although not all of these will deal with property cases. Mediation is a process that tries to resolve disputes with the help of a neutral third party. It helps you retain control over the issues affecting your property, without having a decision imposed on you by someone else. Mediators will charge a fee.
- Use an arbitrator. Arbitration is a process where the parties choose an accredited lawyer to decide how their property is to be divided. The process is usually cheaper and much quicker than going to Court. Court staff can supply you with a brochure that provides more information. Arbitrators charge a fee.
- Write a letter setting out your claim to the other party, making suggestions about sorting out the division of your property. If possible, you should ask a family lawyer to write the letter for you, or give you advice about what to say.

The attached Directory contains details of low cost legal services.

4) *Where can I get more information?*

Before you start any Court proceedings you should attend an Information Session at the Court or at some Community Legal Centre. If you start Court proceedings you will be required to attend an Information Session before the first hearing.

Information Sessions are held at the Court each **Thursday at 10am** (children's issues only) and **at 11.30am** (property settlement issues only). The sessions are free and usually take about 1 ½ hours each.

5) *Do I need a lawyer?*

You don't have to get a lawyer if you decide to go to Court, but it is difficult to conduct Court proceedings without legal help. If you intend to seek legal advice you should ensure your lawyer has experience in family law. Legal Aid is not usually available for property cases. **Court Staff cannot give legal advice.**

6) *What forms do I need?*

There are two forms in this kit – an Application for Final Orders and a Financial Statement.

If you or the other party have an interest in a superannuation fund you will also need either the last two member statements from the fund or a Superannuation Information Kit. This is available from the Court or at www.familycourt.wa.gov.au (The Superannuation Information Kit should be

used only if you were married to the other party – it does not apply to de facto couples.)

7) *How do I fill in the application for final orders form?*

Work your way through each part of the Form. It doesn't have to be typed but please print very neatly.

8) *What orders should I ask for?*

Write the orders you want in Part F of the Form. You may need to attach an extra page to the Form. Some examples are shown at the end of this kit.

Sometimes people applying to the Court ask for orders to preserve the position until the final decision is made. These are called “*interim orders*”. If you want any interim orders, complete an Application in a Case. If you don't ask for interim orders, no orders will be made at the first hearing unless the other party agrees.

If you decide to apply for interim orders you must also file an affidavit. This Form is available from the Court or at www.familycourt.wa.gov.au.

9) *How do I fill in the Financial Statement?*

Read all the instructions on the form very carefully then fill in each section. This is a very important document and there are penalties for making false statements. You must make a full and frank disclosure of your financial position.

10) *How do I sign the Financial Statement?*

First, find a Justice of the Peace (JP), a lawyer or a Notary Public. (There are links on the Court's website at www.familycourt.wa.gov.au or check with Court staff to see who is qualified – **a Commissioner for Declarations is not acceptable**.) A Notary Public is appointed by the Supreme Court and will charge for their service.

You and the JP must sign next to the signing clause on page 1 of the Form. Alterations must be initialled by you and the JP.

11) *Where do I find a Justice of the Peace?*

There is usually a Justice of the Peace (JP) at the Family Court between 9.30 am and 1.00 pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page www.justice.wa.gov.au.

12) Do I need to provide anything else?

If you were married to the other party you must provide your marriage certificate or a photocopy.

13) What happens after I have filled in the forms?

Make **two** photocopies of the application form and the financial statement (and the affidavit if seeking interim orders). Where there are more than two parties you will require an extra copy for each other party. There is a photocopier on the ground floor of the Family Court opposite the Registry. Change for the machine is usually available from the Registry.

You can post the forms to the Registry addressed to the **Family Court of WA, GPO Box 9991, Perth WA 6848**. Alternatively you may bring the forms and copies into the Registry. The officer who serves you will take all the papers for assessment. Once they are filed they will return the copies by post. These will show the date of the hearing. One copy is for you and one is for the other party.

14) Do I have to notify the other party?

The Court will not usually hear a case unless the other party has received the Court papers. Registry staff will give you a service kit that explains how to arrange this.

15) Are there any fees?

There is a filing fee of \$204. Payment can be made in cash, cheque or postal/money order made payable to "The Family Court of WA". EFTPOS facilities and payment by Mastercard or Visa card are also available at the Registry counter or at www.familycourt.wa.gov.au under the Fees menu.

16) Can I have the filing fee waived?

You may be eligible to have the fee waived. If you think you could be eligible, ask registry staff for the application form. Anyone with a healthcare or means tested Centrelink card is eligible. If you don't have a health care card, but think you might be eligible, there is a more detailed application form available from the Registry.

17) What will happen at the first hearing?

Court staff will allocate a date for a Procedural Hearing at the time your application is filed. This will usually be about 4 to 6 weeks later. If you can come to an agreement the Magistrate will be able to finalise the proceedings. Otherwise the Magistrate will allocate a date for a Conference, which both parties must attend to try to resolve the dispute. The conference will be conducted by a Court Registrar about 8 to 12 weeks after the Procedural Hearing.

You can come to an agreement at any time – you don't have to wait until the Conference. If you reach an agreement you should file a Minute of Consent Orders signed by all parties and ask a Court Registrar to deal with the case in his or her office. Court staff can tell you how to do this.

18) Can I bring someone to Court with me?

You can bring someone to Court for support. They may sit in the Court but cannot take part unless permitted to do so by the Magistrate. You may use an interpreter if necessary. Ask the Registry staff if you need an interpreter.

EXAMPLES OF ORDERS

*These are general examples only.
You should take legal advice before seeking orders.*

Sale of land and division of proceeds

1. The applicant and respondent shall cause the property situate at (*address*), and being more particularly described as (*land description as shown on the Certificate of Title*) to be placed on the market for sale at a price and on conditions to be agreed between them.
2. The proceeds of sale of the property be disbursed as follows:
 - a) in adjustment of rates and taxes
 - b) in payment of the expenses of sale including real estate agent's commission;
 - c) in payment of any monies required to secure discharge of any encumbrance registered against the title to the said property; and
 - d) the balance be divided in proportions % to the applicant and % to the respondent.
3. The applicant and respondent have liberty to apply to the Court in relation to the terms and conditions of sale.

Transfer of interest in land

The right, title and interest of the applicant/respondent in the property situate at (*address*) and being more particularly described as (*land description on the Certificate of Title*) transfer to the respondent/applicant absolutely.

Transfer of interest in land upon payment

1. The applicant/respondent shall pay to the respondent/applicant the sum of \$X within 30 days.
2. Upon payment of the said sum the respondent/applicant transfer to the applicant/respondent the whole of his/her right, title and interest in the property situate at (*address*) and being more particularly described as (*land description on the Certificate of Title*).
3. The applicant/respondent indemnify the respondent/applicant and keep the respondent/applicant indemnified in relation to all liabilities and outgoings with respect to the property including all obligation pursuant to the mortgage registered against the title to the property.

Assets other than land

The applicant and respondent each retain the motor vehicles and furniture and household contents presently in their possession or control.